

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Market Entry and Regulation )  
of Foreign-affiliated )  
Entities )

IB Docket No. 95-22

To: The Commission

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COMMENTS OF NATIONAL BROADCASTING COMPANY, INC.

In a Petition for Rulemaking filed November 30, 1994, NBC argued that the critical national economic and policy implications of the rules governing foreign ownership of U.S. broadcast media require that those rules be clearly articulated, changed only in the context of a proceeding in which all interested parties can comment, and enforced strictly and equally against all competitors.<sup>1</sup> NBC therefore applauds the FCC's decision to initiate this proceeding to consider the standards that should be applied to requests for approval of applications exceeding the alien ownership and control limits imposed by Section 310(b). Objective, written standards must control the exercise of governmental discretion both because the economic and policy implications involved are important and because the FCC for 60 years has never granted any exceptions to 310(b)'s limits on alien ownership of broadcast stations. While this proceeding broadly addresses the standards to be applied to the opening of

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<sup>1</sup>NBC withdrew its November 30 Petition in part because of the Commission's decision to initiate this proceeding.

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international telecommunications markets, NBC's comments are limited to the special circumstances and policy concerns that infuse the issue of alien ownership of broadcast facilities.

In setting the standards for consideration of whether and to what extent the Commission should allow alien ownership of broadcast licensees in excess of the current statutory limit, the FCC should try to accomplish two goals:

- (1) First, the primary goal should be to open up opportunities for U.S. investment in foreign broadcast markets. The promise of increased access to the U.S. market could be a significant incentive for foreign countries to reduce their own barriers to alien investment in broadcast outlets. The outcome of this proceeding should send the message abroad that the large and important U.S. broadcast market will be more open for nationals of those countries that allow fully reciprocal access to U.S. nationals.
- (2) Second, any standards for allowing alien investment in broadcast licensees in excess of Section 310(b) limits must be clearly and precisely defined, and must be evenhandedly applied to all competitors.

In considering these issues the Commission must focus specifically on the difficulties of opening foreign mass media markets to international investment. The almost universal concerns that have kept broadcast markets tightly closed -- cultural, national identity, political, and national security interests -- mean that the broadcast sectors of international

telecommunications markets will be by far the most difficult to open. Particularly strong incentives to open these markets to U.S. investment will be needed. Far more than the usual economic protectionism is involved.

**I. Promise of Reciprocal Access to the U.S. Market is a Powerful Incentive for the Removal of Broadcast Investment Barriers**

This proceeding offers the FCC an opportunity to stimulate foreign investment opportunities for U.S. companies. Despite the great political and cultural pressures that keep broadcast markets closed, the knowledge that opening a market to U.S. interests will bring reciprocal access to the important U.S. broadcast market can be an effective incentive for the removal of broadcast investment barriers. The Commission should send the message to other nations that relaxation or even elimination of market entry barriers for Americans will be rewarded with reciprocally broad access to American broadcast markets.<sup>2</sup>

In exploring whether to take reciprocal access into account in making public interest determinations under Section 310(b), the Commission must recognize that unique and historic concerns surround the issue of foreign investment in broadcast

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<sup>2</sup>Loopholes and special exceptions -- which may provide easier means of access to the U.S. market than achievement of full reciprocity -- will destroy the value of U.S. reciprocity as an incentive to open markets.

facilities.<sup>3</sup> As NBC showed in its Petition for Rulemaking, the nearly universal rule in countries around the globe is that broadcast markets are largely closed to significant foreign investment. Reproduced on the next page is a chart prepared in January 1993 by the U.S. Department of Commerce summarizing the laws of some 20 countries on ownership limits applicable to broadcast television.<sup>4</sup> These laws are more than the garden variety trade protectionism: they reflect ingrained concerns with the continuity of culture and the preservation of national identity, as well as national security interests and, in many cases, the protection of political institutions or parties. Many of these same concerns have been the foundation for government ownership or strict governmental control of broadcast media in many nations.

The traditional concerns that have resulted in close state control or even state ownership of telecommunications facilities around the globe still exist, but in many cases at least some reduction of these concerns is apparent. Many state-owned telecommunications facilities are being wholly or partially privatized. But even with this trend it is not surprising that the special cultural, national identity, political, and national security concerns that resulted in tight government regulation or

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<sup>3</sup>In this country, the Commission has virtually never allowed alien investment in broadcast media above the 25% benchmark, although it has done so for non-broadcast media.

<sup>4</sup>Some of these laws have changed since the chart was compiled, but the vast majority remain in place.

Country	Foreign Ownership Permitted		Percentage of Foreign Ownership Permitted	
	Broadcast	Cable	Broadcast	Cable
United States	Yes	Yes	20-25%(a)	100%
Japan	Yes	Yes	20%	20%
Germany, Fed. Rep. of	Yes	No	(b)	N/A
France	Yes	Yes	20%(c)	100%
Italy	Yes	(d)	non-controlling(e)	N/A
United Kingdom	Yes	Yes	30-50%(f)	100%
Canada	Yes	Yes	20%(g)	20%(g)
China	No	No	N/A	N/A
Brazil	Yes	Yes	30%	N/A
Spain	Yes	(d)	25%	N/A
India	No	No	N/A	N/A
Australia	Yes	No(h)	15-20%(i)	N/A
Netherlands	No	No	N/A	N/A
South Korea	No	No	33%	N/A
Switzerland	No	No(j)	N/A	N/A
Mexico	No	No(k)	N/A	N/A
Sweden	Yes(l)	Yes	(m)	(m)

Sources: compiled from individual country sources and embassies, where available; otherwise, ITA and the Library of Congress.

- (a) See supra at p. 77.
- (b) There are no formal restrictions. The 16 German Laender grant licenses independently.
- (c) Generally, the foreign ownership rules of France and other EC-member countries apply only to entities of non-EC member countries.
- (d) The cable industry is not regulated.
- (e) Only non-EC foreign owners are restricted to a non-controlling interest.
- (f) Control is defined as an interest of more than 30 to 50%, depending on the circumstances.
- (g) No single foreign shareholder may own more than 10% of the stock of a broadcasting or cable company.
- (h) Cable has not been introduced in Australia.
- (i) No individual foreigner may own more than 15% of the issued capital or voting rights in a broadcast company and aggregate foreign ownership in a broadcast company may not exceed 20%.
- (j) Virtually all TV broadcast transmission takes place over a cable system operated by the state monopoly.
- (k) A recently passed law that would allow up to a 49% foreign ownership interest of cable facilities has not yet gone into effect.
- (l) The first private station went on the air Jan. 1, 1992.
- (m) No formal restrictions exist. The license of the only commercial broadcast station, TV4, restricts foreign ownership to 30%.

Table 6.1: Foreign Ownership Restrictions

government ownership broadcasting stations still prevail in most countries. Nations that may be willing to allow significant foreign investment in common carrier facilities may be unwilling to allow similar alien interests in broadcast facilities. Countries that are just getting comfortable with the idea of private ownership of broadcast facilities understandably may be reluctant to allow private ownership by aliens.

The GATT negotiations in particular underscore that the opening of foreign electronic media markets to outside investment is an extremely difficult objective, and that many nations will continue to impose foreign investment restrictions even in the absence of reciprocal limits. For instance, the United States imposes no restrictions on the distribution of foreign-produced content here, yet Canada and many European countries place significant restrictions on the distribution of U.S.-produced programming and have refused U.S. requests that those restrictions be lifted.

It is precisely because the social, cultural, political, and security concerns that underlie restrictions on alien control of broadcast franchises are so ingrained that particularly strong incentives are needed to overcome them. The FCC can and should use Section 310(b) exceptions as enticing carrots to motivate other countries to open their markets to investment from U.S. broadcasters.

In practical terms, this means that FCC rules should flatly state that (in the absence of extraordinary circumstances) the Commission will waive the Section 310(b) limits for foreign investment in U.S. broadcast facilities only if it is able to make an explicit, on-the-record finding that U.S. citizens and companies have the same actual and existing mirror image rights to participate in the relevant foreign market or markets. The reciprocity must allow Americans to hold at least the same level of financial interests and control interests in broadcast media of the foreign country as foreign investors are seeking here. To maximize the incentive value of Section 310(b) exceptions, the degree of reciprocity afforded by the foreign country should be an absolute ceiling for investment in U.S. broadcast licenses above the statutory benchmark.

**II. The Standards Must Be Precisely Articulated and Strictly and Equally Enforced Against All Competitors**

The clarity of the present standard should be the starting point of the FCC's analysis of any new alien ownership standard under which exceptions to the Section 310(b) limit would be granted: for 60 years the FCC has not allowed alien equity in or control of broadcast stations above the Section 310(b) benchmarks. The FCC's enforcement of Section 310(b), at least until now, has been uniform.

Fairness dictates that any standards adopted in the present rulemaking -- which contemplates the first articulation of broadcast public interest exception standards under Section 310(b) -- be conducive to the same strict and equal enforcement as the existing standard. Alien ownership restrictions are too important, and exceptions are far too potentially valuable as incentives for opening of international markets, to suffer from vague and loose interpretation or unequal and discriminatory enforcement after 60 years of strict and evenhanded administration. NBC urges that the FCC's standards for allowing alien ownership in excess of Section 310(b) limits contain the following characteristics and criteria:

- the standards themselves must be explicit and precise. Mirror image reciprocity provides a specific, concrete framework for such standards;<sup>5</sup>
- the FCC should commit itself to apply these standards in all cases;<sup>6</sup>

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<sup>5</sup>As the primary concern of Section 310(b) evolves towards trade issues and away from national security concerns, economic interests in the licensee become much more important. In the absence of reciprocity the Commission should refuse to entertain arguments that economic interests above 25% should be permitted when control rests with U.S. citizens.

<sup>6</sup>Of course, the FCC must retain the discretion to deny particular applications on such grounds as national security interests.

- the Commission should establish enforcement mechanisms to get the information it needs to make decisions under the standards;<sup>7</sup> and
- the Commission should state that the basis of every public interest finding will be made explicitly and on the record, even when the application is uncontested.<sup>8</sup>

These controls will help ensure that Section 310(b) exceptions are used to obtain real access to foreign markets for Americans.

### Conclusion

The goal of this proceeding should be the aggressive pursuit of foreign broadcast markets for U.S. investors. In light of the enormous difficulty of opening foreign broadcast markets to U.S. investment, Section 310(b) exceptions can be effective tools for opening foreign markets. However, indefinite standards, vague assurances by foreign governments that waivers for U.S. companies will be favorably viewed, or leaving open the possibility of U.S. waivers in the absence of precise, mirror image reciprocity will encourage gamesmanship, not open foreign markets for U.S.

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<sup>7</sup>Applications seeking FCC approval of alien interests above the Section 310(b) benchmarks should describe the full extent of all alien economic and control rights, both actual and contingent. No alien interests should be exempt from disclosure, whether or not those interests would be considered to be "attributable" under the Commission's rules.

<sup>8</sup>It is axiomatic that the Commission cannot grant a waiver, or make an extraordinary public interest finding, that an applicant does not request. Thus, Section 310(b) exceptions must be both explicitly requested and explicitly granted. Otherwise, it would be impossible to determine whether the Act is being evenhandedly enforced.

investors. The FCC should establish as a firm rule that it will grant Section 310(b) exceptions to the extent (but only to the extent) that actual, mirror-image reciprocity exists in the foreign market. The Commission should permit itself no discretion to depart from this standard. Finally, whatever rules are adopted should be clearly articulated and applied with absolute consistency to all competitors.

Respectfully submitted,



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